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In This Edition

Health Care Reform

Federal Agencies Issue Guidance on Grandfathering, Patient Rights

Nearly four months after President Barack Obama signed landmark health care reform legislation, employers now are starting to see the real impact with two sets of interim rules released by federal agencies.

In June, the IRS and the departments of Health and Human Services, Treasury and Labor issued interim final regulations on "grandfathering" and outlined what would cause a health plan to lose its exempt status.

Under the Patient Protection and Affordable Care Act (PPACA), health care plans that do not undergo "significant changes" won't have to comply with some of the law's provisions, such as full coverage of preventive services. The rules, according to reports by *Workforce Management* and *Human Resource Executive Online*, offer some examples of what moves would trigger a loss of grandfathered status. They include:

- Eliminating coverage of a specific medical condition, even if the condition is uncommon.
- Increasing coinsurance requirements.
- Increasing copays by more than $5 or more than 15 percent plus the rate of medical inflation (whichever is greater).
- Decreasing the employer's share of premium paid by more than 5 percentage points.
- Moving to another grandfathered plan with fewer benefits.

In addition to the exemption for preventive services, grandfathered plans are not required to extend coverage to employees' children up to age 26 until January 1, 2014, for cases in which the adult child is eligible for coverage through his or her own employer.

However, even grandfathered plans must comply with another set of PPACA-created regulations, dubbed the "Patient's Bill of Rights" by the Obama administration. The government's interim rules on these regulations, released shortly after the grandfathering notice, are designed to "put American consumers back in charge of their health care coverage and care," according to a fact sheet posted at: http://www.healthreform.gov/newsroom/new_patients_bill_of_rights.html.

Features of these rules, which apply to health coverage starting on or after Sept. 23, 2010, include:

- Prohibiting insurers from denying coverage for children under age 19 because of pre-existing conditions. (In 2014, this provision will extend to adults, as well.)
- Removal of lifetime limits on benefits, with a ban on annual limits in 2014.
- Prohibiting insurers from retroactively dropping coverage for customers after they get sick because of a mistake on their paperwork, known in the insurance industry as "rescissions."

The Obama administration estimates that these changes will have little effect on premiums, according to a report by *Kaiser Health News*. For instance, the government expects the provision that prohibits denial of coverage of children with pre-existing conditions to prompt an annual premium increase of 1 percent or less. The administration said the ban on lifetime limits could drive up premiums by 5.1 percent on plans that have annual limits of $250,000. However, the government asserts that only 0.5 percent of plans fall into this category, and most people would see an annual premium increase below 1 percent. Government analysts expect the end of rescissions to spark an annual premium increase of less than 1 percent, as well.

Some legislators and industry analysts, on the other hand, question the reality of those estimates and say the regulations fall short of helping employers or employees.

"While [rules] will purport to add clarity to the 2,700 pages of health care legislation, the effect will be more hoops to jump, said Cyndy Nayer, president of the Center for Health Value Innovation, told *Employee Benefit News*.

"The rules that should be clarifying how this will benefit the citizens are not delivering on affordable and accessible care, and the [Obama] administration does not appear to be focused on easing the transition," Nayer said.

FMLA

DOL Widens FMLA Eligibility

While employers' attention is swirling around the evolving regulations from recent health care reform legislation, the federal government also has been tinkering with an older labor law that could have significant impact on employers.

The Department of Labor (DOL) in June altered the definition of "son" and "daughter" as it applies to the Family and Medical Leave Act (FMLA), allowing some same-sex couples and domestic partners to take time off to care for their partners' children.

The DOL's decision also would allow other caregivers, such as aunts, uncles and grandparents, to take advantage of the 12 weeks of unpaid leave that FMLA permits.

Under the changes, "an employee who either bears day-to-day responsibility for care or financially supports the child stands in loco parentis," meaning he or she can qualify for leave to take care of a child under FMLA, even if the employee is not a legal parent of the child, according to the law firm Gray Plant Mooty.

To verify eligibility, employers can require employees to produce "reasonable documentation" of the relationship under the rules, writes the law firm's Bryan Seiler.

Myra Creighton of Fisher & Phillips LLP said the changes will spark a jump in FMLA requests, and "reasonable documentation" likely won't be hard for employees to produce.

"[The] DOL clearly says that '[a] simple statement asserting that the requisite family relationship exists is all that is needed in situations such as in loco parentis where there is no legal or biological relationship,'" Creighton told *Human Resource Executive Online*.

Stephen Paskoff of ELI Inc., a compliance company in Atlanta, said most employers will be able to adjust to this change because they already have solid FMLA policies in place. The difficult part, Paskoff told the online HR magazine, will be educating managers and making sure they follow the rules.

Communications

New Laws Offer Benefit 'Teaching Moments'

Employers who are struggling to comprehend the end results of health care reform aren't alone. Many of their employees are trying to sift through a mountain of information in the media to find out how this legislation will affect their benefits.

The reforms have moved benefits back into the spotlight, which translates into a golden opportunity for HR departments to educate their workforce, according to Jennifer Benz, a communications and marketing expert for the HR industry.

"Employees care about their benefits more than ever before," Benz writes in a recent article for *Employee Benefit News*, "and they are looking to you to help them understand what is ahead. If you've spent time in the last decade trying to engage employees and family members in new health and wellness behaviors, now's the time to recommit to your priorities and weave together narratives of health, costs and reform."

Benz suggests using metrics that are already on hand to analyze how employees are using their benefit offerings. This will help employers decide how to proceed with a communications plan, Benz writes.

When talking to employees about health care reform, don't worry if you don't have all the answers, Benz advises. "Communication is essential in uncertain times, and not knowing all the answers is no excuse not to communicate," Benz writes. "You know plenty already, and a heck of a lot more than your employees." Answer what you know and try to stick to the facts, keeping in mind the various viewpoints that are surrounding these issues, Benz writes.

While a good communication plan will be essential in helping employees make the right benefit decisions in the wake of health care reform, a recent study suggests that HR professionals may have their work cut out for them. A national poll by Unum found that fewer employees felt they received effective benefits education in 2009 compared with 2008. The drop in education went hand-in-hand with workers' lower opinions of their employer and their benefits, the research found.

In contrast, those who said they received good benefits education were more satisfied with their work. A vast majority (90 percent) of those respondents said they thought their employer valued their work, and 88 percent said they were satisfied with their job.

"[As] the benefits landscape is shifting, it is more important than ever to give employees the right tools to understand their benefits choices and to communicate what's available to them," said Bill Dalicandro, Unum's vice president of enrollment, in a recent report by the Society for Human Resource Management.

An employer's communication method might prove to be just as important as what they say to their workers. With technology and social media gaining in popularity, some HR departments are starting to dabble in Facebook, Twitter and other social media to educate the workforce on employee benefits. A recent survey, however, suggests that idea may not be so hot.

The survey, conducted by the National Business Group on Health (NBGH), found that while 47 percent of the polled full-time U.S. employees said they use Facebook either daily or weekly, only 7 percent said they use it for business purposes. Nearly three-fourths said they have no interest in receiving benefits information on Facebook. About 80 percent were cold to the idea of benefit "tweets" via Twitter, the survey found.

"Because we hear so much about social media . . . we're made to feel that we're out of it if we're doing the old-fashioned thing like home mailings," Helen Darling of NBGH told *Workforce Management*. "But even the youngest employees prefer receiving communications the old-fashioned way."

In Brief

PARITY DEADLINE

The Department of Labor (DOL) is granting a temporary reprieve for some employers to comply with the Mental Health Parity Act until final rules are issued. Because many companies use copayments for medical health services and coinsurance for mental health services, neither one would meet the "substantially all" test that had been set by the interim final rules issued in January. Therefore, many employers would not have been allowed to require any cost-sharing of outpatient mental health services. The DOL made its latest decision after receiving public comments.

COBRA SUBSIDY SNAG

Senate Democrat leaders failed to win enough support in late June for an extension of the federal COBRA premium subsidy program. The program provided a 65 percent subsidy for COBRA premiums up to 15 months for workers who were involuntarily terminated through May 31. However, employees terminated after that date will not receive a subsidy. Senator Robert Casey, D-Pa., introduced an amendment that would extend the program through November 30, but it was opposed by Republicans and some fiscally conservative Democrats because it would increase the federal deficit.

STICKING WITH BENEFITS

Most employers don't expect to dump their benefit plans because of the recent health care reform legislation, according to a poll by the International Foundation of Employee Benefit Plans. Of the 1,000 employers polled, 87 percent said they plan to continue to offer health benefits because they serve as an effective recruitment and retention tool. Twenty-one percent of employers expect to add or increase emphasis on high-deductible health plans to offset the expected higher costs associated with health care reform.

RIGHT TO SICK DAYS?

Three-quarters of respondents to a poll by the National Opinion Research Center said they see paid sick leave as a basic worker's right, and the same number believe that employers should be required to offer paid sick days to employees. Those polled indicated they are somewhat sensitive to the challenges faced by small businesses regarding paid sick days, with 47 percent saying they favor letting companies with fewer than 15 employees provide fewer paid sick days than larger companies. However, only 17 percent said they would want small businesses to be completely exempt from offering paid sick days.

OBESITY RATES SWELL

Twenty-eight states saw their obesity rates rise in the past year, according to research by the Trust for America's Health. Mississippi had the highest rank for a sixth year in a row -- with 33.8 percent of the adult population rated obese -- followed by Alabama and Tennessee (both 31.6 percent). Nearly all the top 10 states were in the South. The healthiest states were concentrated in the Northeast and West. Colorado had the lowest obesity rate at 19.1 percent.

REHIRING BUMP

A recent poll by the Society for Human Resource Management found that while employers say they likely will continue cost-cutting strategies, such as attrition and wage freezes, more are starting to rehire laid-off workers. Forty-five percent of those polled said they've rehired employees who previously were laid off, up from 30 percent in October 2009.

BANKING ON 401(k)

More than half of participants in 401(k) plans say their savings are more important to them since the economic crisis of 2008, an increase of 10 percent from last year, according to BlackRock, an investment firm. Saving for retirement tops other financial goals, such as saving for health care and reducing personal debt. Employees see their employers' matching contributions as the most powerful influence on their 401(k) savings rate, the research reveals.

SECURITY, BENEFITS RULE

For the fourth consecutive year, employees said job security and benefits are "very important" in creating job satisfaction, a recent poll by the Society for Human Resource Management found. HR professionals agreed with employees on the importance of job security. However, HR respondents ranked an employee's relationship with his or her supervisor as a top contributor to job satisfaction, while fewer than half of employees consider their relationship with their boss a key factor.

RETIREE APPLICATION

The Department of Health and Human Services has posted an official application that employers must use to apply for the Early Retiree Reinsurance Program, which will reimburse employers for a portion of health care claims from plans that cover retirees who are at least 55 but not eligible for Medicare. Employers can download the application and view the fact sheet at: http://www.hhs.gov/ociio/regulations/errp/index.html.

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